



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part 669

[FHWA Docket No. FHWA-2016-0004]

RIN 2125-AF71

Heavy Vehicle Use Tax; Technical Correction

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final Rule.

SUMMARY: This rule makes a technical correction to the regulations that govern the enforcement of the Heavy Vehicle Use Tax. The amendments contained herein make no substantive changes to FHWA regulations, policies, or procedures. The current regulation references a section of the United States Code that was later amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Dougherty, Office of Highway Policy Information, telephone 202-366-9234 or email at michael.dougherty@dot.gov; or William Winne, Office of the Chief Counsel, telephone 202-366-1397 or email at william.winne@dot.gov. Both are located at 1200 New Jersey Avenue, S.E., Washington, DC 20590. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at: <http://www.gpoaccess.gov/nara>.

Background

This rulemaking makes technical corrections to the regulations that govern policies and procedures relating to the enforcement of the Heavy Vehicle Use Tax found at 23 CFR part 669. In the final rule published in the Federal Register on July 26, 2010 (75 FR 43409), FHWA referenced 23 U.S.C. 104(b)(4) in 23 CFR 669.13 and 669.19, which at that time governed the effect of failure to certify or to adequately obtain proof-of-payment and the reservation and reapportionment of funds. Section 1404(d)(2) of MAP-21 (PL 112-141), enacted in 2012, amended that section and inserted revised language governing the Heavy Vehicle Use Tax at 23 U.S.C. 104(b)(1). As a result of the language in MAP-21, the penalty for States for non-compliance with the proof of payment requirements of the Federal Heavy Vehicle Use Tax at the time of State registration was amended. The penalty computation was amended by statute to eight percent of the amount apportioned in any fiscal year beginning after September 30, 1984 (23 U.S.C. 104(b)(1)) as was reference to the amended portion of the statute at section 104(b)(1).

However, the regulations in 23 CFR part 669 have several references to the old statute at 23 U.S.C. 104(b)(4) and also suggest the penalty is 25 percent rather than 8

percent. As such, references in 23 CFR 669.13 and 669.19 to 23 U.S.C. 104(b)(4) cause confusion. These amendments will direct readers of 23 CFR 669 to the proper section of 23 U.S.C.

Finally, the authority citation for part 669 will be updated to reflect ministerial changes in the numbering of FHWA delegations of authority made with the publication of the final rule on Organization and Delegation of Powers and Duties on August 17, 2012 (77 FR 49964, 49981). The current regulation cites authority contained in 49 CFR 1.48. The location of those sections describing delegations to the Federal Highway Administrator are now found at 49 CFR 1.85.

The 2012 change in location within the CFR is ministerial in nature and pertains to DOT management and organization. Amendment of the section identifying the authority for part 669 will direct readers to the proper section of 49 CFR.

Rulemaking Analyses and Notice

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. The amendments to the rule are based upon the explicit language of statutes that were enacted subsequent to the promulgation of the rule. The FHWA does not anticipate receiving meaningful comments on it. State and local governments rely upon the regulations corrected by this

action. These corrections will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, FHWA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this final rule is not a significant regulatory action within the meaning of Executive Orders 12866 or significant within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866 and 13563 to improve regulation. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule only makes minor corrections that will not alter the regulatory effect of 23 CFR 669. Thus, the final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (PL 96-354), FHWA has evaluated the effects of this action on small entities and has determined that the action will not have a significant economic impact on a substantial number of small entities. The final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (PL 104-4). This final rule does not impose any requirements on State, local, or tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FHWA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this final rule does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This final rule does not create any new information collection requirements for which submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

National Environmental Policy Act

The FHWA has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this final rule under Executive Order 13175. The FHWA concluded that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. There are no requirements set forth in the final rule that directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

Under Executive Order 13045 this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 13211 (Energy Effects)

This final rule has been analyzed under Executive Order 13211. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 669

Excise taxes, Grant programs-transportation, Highways and roads, Motor vehicles.

Issued on: May 13, 2016

Gregory G. Nadeau
Administrator
Federal Highway Administration

In consideration of the foregoing, 23 CFR part 669 is amended as set forth below.

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

1. Revise the authority citation for part 699 to read as follows:

Authority: 23 U.S.C. 141(c) and 315; 49 CFR 1.85

2. Revise § 669.13 to read as follows:

§ 669.13 Effect of failure to certify or to adequately obtain proof-of-payment.

If a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof-of-payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(1) for the next fiscal year shall be reduced in an amount up to 8 percent as determined by the Secretary.

3. Amend § 669.19 by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 669.19 Reservation and reapportionment of funds.

(a) The Administrator may reserve from obligation up to 8 percent of a State's apportionment of funds under 23 U.S.C. 104(b)(1), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States pursuant to the formulas of 23 U.S.C. 104(b)(1) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the State, that the state has come into conformity with this regulation prior to the final determination. * * *

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